

REMARKS/ARGUMENTS

Claims 1-109 are pending in the current application. Claims 2, 15, 29, 42-47, 51-52, 54-55, 59-60, 62, 64-65, 68-69, 72-73, 76-80, 83, 91-93, 103-105 and 109 have been canceled.

Claims 1, 3, 37, 70, 84 and 98 are amended herein. These amendments are fully supported by the specification, drawings and claims as originally filed; no new matter has been added.. Entry of the requested amendments and favorable consideration of the comments contained herein are requested.

REJECTION UNDER 35 U.S.C. §102(b)

Claims 1, 5-11, 14, 16-28, 30-36, 84-90 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Shennib '074 (See 2/02 Office Action at page 2). Applicants respectfully traverse this rejection; Shennib '074 does not teach or suggest all elements of the invention of claim 1 or claim 84. However, in order to expedite prosecution, Applicants have amended claims 1 and 84 to obviate this rejection. For example, amended claim 1 now recites a handheld device that includes a housing configured to be held in the hand of the user. Nowhere does Shenib '074 teach a hand held device, let alone a device having a housing that can be held by the user (See e.g., Shenib '074 Figures 1, 5-7) and the Examiner has indicated as such (See 2/02/04 Office Action, at page 7).

Claim 1 also recites adjustment means configured to produce a substantially constant acoustical perception at the subject's ear irrespective of device position or test mode. Claim 84 recites adjusting a characteristic of acoustic test stimuli utilizing the distance measurement to produce a substantially constant acoustical perception at the subject's ear irrespective of the measured distance. These amendments are fully supported by the specification drawings and claims as originally filed (See e.g., at page 17 lines, 3-5 and Figure 1-5).

No where does Shennib '074 recite such adjustment means or producing a substantially constant acoustical perception at the subject's ear irrespective of the measured distance. Instead, Shennib '074 teaches the use of an adjustable chair to move the subjects head to "ensure proper ear positioning". (See e.g., Shennib '074 Col 14 lines 24-25 and Figure 6). In other words, Shennib teaches the use of a fixed audiometer device that requires the subject to move their head to be within a fixed distance from its device. This clearly divergent teaching cannot and does not read on the subject matter of claim 1 or claim 84 nor their respective dependant claims. Accordingly, withdrawal of the rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. §103(a)

Claims 3 and 37 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shennib '074 in view of Brillhart '306 (See 2/02/04 Office Action, at page 7). Applicants respectfully submit that the amendment of claim 1 and 3 have obviated the rejection of claim 3. Specifically, the combination of Shennib '074 and Brillhart '306 does not teach or suggest all elements of amended claim 3 (e.g., "adjustment means configured to produce a substantially constant acoustical perception at the subject's ear irrespective of device position or test mode"). In fact, as described above, Shennib '074 teaches away from the subject matter of claim 1 and therefore, from the subject matter of claim 3 as well.

In regard to the rejection of claim 37, applicants respectfully traverse this rejection. However, in the interest of expediting prosecution, applicants have amended claim 37 to recite subject matter that is completely allowable over the cited art. For example, claim 37 now recites a housing configured to be held in the hand of a user and direct sound and a position sensing signal at a user's head or a head of another test subject. Shenib '074, alone or in combination with Brillhart '306, does not teach such a limitation. In fact, Shenib '074 teaches the opposite (See e.g., Shennib '074 Figure 5). Further, as the current Office Action correctly points out "Shennib does not clearly teach that [its] device is constructed and adapted to be held by said test subject" (2/02/04 Office Action, at page 7) and thus, does not clearly teach a "hand held

device" as is recited in claim 37. Accordingly, for the reasons above, applicants respectfully request the Examiner to withdraw the rejection.

Claim 4 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shennib '074 in view of Luethi '737(See 2/02//04 Office Action, at page 8). For reasons described above, applicants submit that the amendment of claim 1 has overcome this rejection. Accordingly, applicants respectfully request the Examiner to withdraw the rejection.

Claims 12-13 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shennib '074 in view of Downs '998 (See 2/02//04 Office Action, at page 9). For reason described above, applicants submit that the amendment of claim 1 has overcome this rejection. Accordingly, applicants respectfully request the Examiner to withdraw the rejection.

Claims 37-41, 48-50, 53, 56-58, 61-63 and 66-67 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shennib '332 in view of Shennib '074 (See 2/02/04 Office Action, at page 9). For reasons described above, applicants submit that the amendment of claim 37 has overcome this rejection. Accordingly, applicants respectfully request to withdraw the rejection.

Claims 70-71, 74-75, 81-82, 98-102, 106-108 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Anderson '783 in view of Shennib '074 (See 2/02/04 Office Action, at page 12). Applicants respectfully traverse this rejection. However in order to expedite prosecution, applicants have amended claims 70 and 98 to obviate the rejection. Claim 70 now recites a position sensor system "configured to be operable in a packet signaling sensing mode to compensate for interference". Anderson '783 alone or in combination with Shennib '074 does not teach or suggest such a position sensor system. Accordingly, on this basis, withdrawal of the rejection in regard to claims 70-71, 74-75 and 81-82 is respectfully requested.

Claim 98 now recites a method including "calibrating said acoustic test stimuli based on the distance measured by said position sensing, so as to produce a substantially constant acoustical perception at the test ear irrespective of the measured distance. "Anderson '783, alone or in combination with Shennib '074 does not teach or suggest such a limitation. In particular Shenib teaches away from adjusting acoustic stimuli based on distance measurement, because, as

described above, Shenib teaches that subject must move their head more to be within a fixed distance from its device "to ensure proper ear positioning." Further, Anderson '783 does not compensate for this deficiency. Accordingly, on this basis, withdrawal of the rejection in regard to claims 98-102 and 106-108 is respectfully requested.

Claims 85 and 94-97 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shennib '074 in view of Anderson '783 (See 2/02/04 Office Action, at page 16). Applicants respectfully traverse this rejection. Applicants respectfully submit that the rejection of claims 85 and 94-97 has been overcome by the amendment of claim 84 for reasons described above. Specifically, Shenib '074 teaches away from the method of claim 84. Therefore, the skilled artisan would not be motivated to combine the teaching of Shennib '074 with Anderson '783 as there would be no expectation of success. Moreover, even, *in arguendo* if there was, which applicants expressly state is not the case, Anderson '783 still does not compensate for the deficiencies of Shennib '074. Thus, the combination cannot and does not teach all the limitations of claim 85 and 94-97. Accordingly, for this reason, withdrawal of the rejection is respectfully requested.

Appl. No. 09/400,151
Amdt. dated August 2, 2004
Reply to Office Action of February 2, 2004

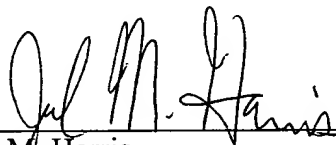
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Attorney Docket No.: 022176-000700US

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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